

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JUWAN EVRICK MITCHELL,)
agent of BRITTNAY CHRISTEN)
ALEXDRINA)
Plaintiff,)
))
v.) **Civil No. 21-943**
))
BRUCE R. BENNER, JUDGE, Court of)
Common Pleas, et al.,)
))
Defendants.)

MEMORANDUM ORDER

Juwan Evrick Mitchell filed this action without filing fee or a motion for leave to proceed in forma pauperis. This case was referred to Magistrate Judge Maureen P. Kelly in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Civil Rules 72.C and D. Magistrate Judge Kelly issued an Order on July 30, 2021 requesting Mr. Mitchell to clarify whether he was filing a civil rights action or a habeas petition. Mr. Mitchell responded by stating that he wished to file a habeas petition and he also filed a motion to proceed in forma pauperis. Said motion remained deficient. Magistrate Judge Kelly thus issued a deficiency order on August 27, 2021. Mr. Mitchell responded by filing an amended habeas petition, but he failed to correct the deficiencies identified in the deficiency order. Judge Kelly thus issued an Order to Show Cause on October 29, 2021. Mr. Mitchell responded to this Order, but again he did not cure the identified deficiencies. Therefore, a second deficiency Order was issued on December 27, 2021. Mr. Mitchell failed to respond to the second deficiency order, and therefore Magistrate Judge Kelly issued a Report and Recommendation on January 31, 2022, recommending that this action be dismissed without prejudice. In the Report, Magistrate Judge Kelly examined the six

factors to be weighed when considering dismissal of a case as a sanction as set forth in Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984). Because four of the six factors weighed in favor of dismissal, the recommendation to dismiss without prejudice was issued.

Mr. Mitchell was given until February 17, 2022 to file Objections to the Report and recommendation. Mr. Mitchell has not filed Objections. After de novo review of the pleadings and the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 22nd day of February 2022,

IT IS ORDERED as follows:

The Report and Recommendation (ECF No.12) filed on January 31, 2022, is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that this matter is dismissed without prejudice. A certificate of appealability is denied because jurists of reason would not find the foregoing debatable.

The Clerk is to mark each case closed.

IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if the petitioner desires to appeal from this Order he must do so within thirty days by filing a notice of appeal as provided in Rule 3, Fed. R. App. P.

s/Marilyn J. Horan
Marilyn J. Horan
United States District Court Judge

cc: Juwan Mitchell, pro se
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